HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 766 of 2007

Between:

K. Narsamma

… Appellant

And

The District Registrar,
Ranga Reddy District,
Moosapet, Kukatpally,
Ranga Reddy District
and another

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri M. Janardhana Rao for
Shri V.M. Krishna Reddy

20th September, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 9-7-2007 passed by the learned Single Judge, whereby he dismissed Writ Petition No.14568 of 2007 filed by the appellant for issue of a mandamus to the respondents to register deed of cancellation dated 17-3-2007 presented by her.

The appellant and her son claim to have purchased Plot No.7 measuring 300 square yards in Survey No.60/F, Ward No.8, Block No.3 of Karmanghat, Saroornagar, Ranga Reddy District from B.

Kamalamma through a registered document No.8583 of 2005, dated 28-7-2005. The latter is said to have purchased the same from one G. Sandhya Rani, who, in turn, purchased the property from Smt. Ratna Bai through her GPA. After purchasing the property, the appellant applied for loan for construction of house. At that stage, she is said to have learnt about execution of gift deed by Khaja Faraaz Hussain in favour of Khaja Anjuman Hussain, which was registered on 14-9-2006. After six months, the appellant presented document dated 17-3-2007 for registration purporting to cancel the gift deed executed by Khaja Faraaz Hussain, but the District Registrar refused to entertain the same. She then filed Writ Petition No.14568 of 2007 for issue of a direction to respondent No.1 to register the cancellation deed. She relied on the judgment of the Full Bench in **Yanala Malleshwari v. Ananthula Sayamma**[1] and pleaded that respondent No.1 is bound to register the cancellation deed. The learned Single Judge distinguished the judgment of the Full Bench and dismissed the writ petition by recording the following observations:

> "It is no doubt true that a Full Bench of this Court in the Judgment, referred to above, held that the registering authority has no option, but to admit the deed of cancellation to registration, without reference to the parties to the document. The said Judgment is said to have been stayed by the Hon'ble Supreme Court. However, it was rendered on the basis of the legal regime, that existed at the relevant point of time. Thereafter, the State Government amended the Rules under the Registration Act. Clause (k) was added to Rule 26, which mandates that whenever a cancellation deed is presented for registration, the registering authority must ensure that all the parties to the deed, which is sought to be cancelled, join the cancellation deed also, and it prohibits registration of the deed of cancellation, without such participation. Admittedly, the parties to the gift deed are not made parties to the deed of cancellation, much less, their consent was obtained.

Even where the cancellation of a deed is otherwise permissible, it must be done only by a person, who is a party to the document, that is sought to be cancelled. A stranger to the document cannot be permitted to cancel the same. Viewed from any angle, this Court does not find any basis to grant relief to the petitioner."

We have heard Shri Janardhana Rao, learned counsel for the appellant, who made efforts to convince us that Rule 26 (k) of the Rules under the Registration Act, 1908 is not applicable to the appellant's case and the learned Single Judge committed an error by declining relief to his client on the basis of that rule, but we have not felt persuaded to entertain the appeal.

In **Yanala Malleshwari v. Ananthula Sayamma**'s case (supra), the Full Bench considered the question whether the cancellation deed should be registered without notice to the executant. The majority of the Full Bench examined various facets of the issue and held:

75. It is therefore axiomatic that in India, the judicial, quasi judicial and administrative authorities have inherent powers to recall their orders or proceedings at a latter point of time if it is shown that such order was obtained by playing fraud and misrepresentation. The question of applicability of law of limitation to exercise such inherent power by the administrative authorities does not arise because fraud unravels every thing rendering a fraudulent order void and non-existent. To our mind, this principle in a different manner is also adumbrated in Section 21 of General clauses Act, 1897 (Central Act No. X of 1897). Under the said provision, an authority who has power to issue, inter alia orders has also power to rescind such order. Further, the rule 117 of Registration Rules permits the registration of cancellation deed in the same class of register book as that in which original document which it cancels has been registered. It is clearly not possible to accept the submission that registering officer has no power to accept and register a cancellation deed cancelling the earlier sale deed. Such an interpretation would not sub-serve public interest and if the registering officer is not given such power, it would further harm public interest and public policy. Nobody can deny that in a civilized society regulated by rule of law, the person

with valid title must have the liberty to enjoy his property and such liberty cannot be deprived of without proper procedure under law.

76. In the considered opinion of this Court if a person sells away the property belonging to other, it would certainly be fraud on the statute. It would be adding insult to injury, if such person is asked to go to civil Court and get the subsequent sale deed cancelled or seek a declaration. Be it also noted that under common law, as discussed supra, the title of a person remains intact even if a stranger conveys that title to another stranger, which is ineffective. In the context of describing 'overriding interest' (interests, rights and powers not entered in the register), in Halsbury's Laws of England (Fourth Edition by Lord Mackay, volume 26 (reissue), the following is elucidated:

> **Para 786**. **Entry of existence of overriding interests**. Where the existence of any overriding interest is proved to his satisfaction or admitted, the registrar may, subject to prescribed exceptions, enter notice of the interest or of a claim to it on the register. This is a general provision which authorizes entry of notice of, among other things, the burden of an easement, right or privilege (being an overriding interest) acquired in equity by prescription if it be of such an estate and nature as is capable of taking effect at law.

Any person desiring an entry to be made must make a written application giving particulars of the entry required. If the applicant is the proprietor of the land, or the liability, right or interest has been created by the proprietor, and if in either case there is no caution, restriction or inhibition on the register, an entry of the existence of the liability, right or interest may be made accordingly. In other cases evidence satisfactory to the registrar must be produced of the existence of the liability, right or interest. The proprietor of the land, if not the applicant, must have notice of the application; and the matter must be proceeded with as the registrar directs any entry of the existence of the liability right or interest, if made, must be against the title in the charges register; and such entry must be made so far as practicable and convenient by reference to the instrument creating the right or by setting out an extract from it. No claim to an easement, right or privilege not created by an instrument may be noted against the title to the servient land if the proprietor of that land (after 14 days' notice or such longer period as the registrar deems advisable) shows sufficient cause to the contrary.

77. The person, who has ex facie right whether such right is registered or not can always approach the registering authority, with a request to cancel a sale deed, which was registered earlier by such registering authority by showing that subsequent registration was obtained by fraud by a person who is not entitled to transfer the property or that such transfer was registered by playing fraud on the owner or on the stranger. In the present statutory dispensation, namely Transfer of Property Act, Contract Act, Specific relief Act and Registration Act, the Court does not see any prohibition operating on the exercise of inherent power by the registering authority to cancel the sale deed earlier registered, which is likely to cause prejudice to the true owner as well as to the entire public at large.

After the judgment of the Full Bench, the State Government in exercise of the power vested in it under Section 69 of the Registration Act, 1908 added Rule 26(k) to the Andhra Pradesh Rules under the said Act. For the sake of convenience, Rule 26(k) is reproduced below:

Rule 26 (k):

i) The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyance on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.

ii) Save in the manner provided for above, no cancellation deed of a previously registered deed of conveyance on sale before him shall be

accepted for presentation for registration.

Although the learned counsel for the appellant appears to be right in his submission that Rule 26(k) is applicable only qua deeds presented for cancellation of previously registered deed of conveyance on sale and the same could not have been invoked by the learned Single Judge in his client's case, but we are not inclined to issue a mandamus for registration of the cancellation deed because it is an admitted fact that the appellant is not the author of the gift deed allegedly executed by Shri Khaja Faraaz Hussain in favour of Smt. Khaja Anjuman Hussain and without making them parties or at least giving intimation, the appellant was not entitled to seek registration of the cancellation deed.

For the reason stated above, the appeal is dismissed with liberty to the appellant to avail remedy by filing civil suit.

As a sequel to dismissal of the appeal, WAMP. No.1527 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

September 20, 2007

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[1] 2006 (6) ALD 623